

Date of decision: 10/09/97

ORAL JUDGMENT : (Per: Panchal, J.)

By means of filing this revision application under Section 397, read with Section 401, of the Code of Criminal Procedure, 1973, petitioners have challenged judgment and order dated September 21, 1995, rendered by the learned Additional Sessions Judge, Mehsana, in Criminal Appeal No.15 of 1995, by which conviction recorded and sentences imposed by the learned Assistant Sessions Judge, Mehsana, vide judgment and order dated June 20, 1997, rendered in Sessions Case No.108 of 1993, are confirmed. Original informant, Kamlaben Joitaram Patel, and injured witnesses Jivatben Jeevandas, Taraben Haribhai, Jethiben Kantilal, and Jeevatiben Jeevanlal are residents of village Memadpur, Taluka and District Mehsana. On the date of incident, i.e., August 27, 1992, the original informant and the injured witnesses had gone to the field of Haribhai Manilal Patel for bringing grass for cattle. According to the prosecution case, the respondents had entered the field of Haribhai Manilal Patel with weapons and objected as to why the informant and injured witnesses had come to the field, as the said field was to be purchased by them. After some altercation, original accused No.5 gave knife blow on the right hand palm of informant Kamlaben, whereas accused No.6 caused injury on her back with pick-axe, and accused No.1 caused injury on her left hand by means of stick. Accused No.6 pushed injured Puji and caused injury to her by means of scissors, whereas accused No.5 caused injury to Taraben on her right leg by means of wooden log, accused No.8 caused injury to Jethiben, and Jeevatiben was caused injury by accused No.7. On shouts being raised, the accused ran away. Complaint in the case was filed by Kamlaben at the Civil Hospital with head constable Kalyansinh Bhikhaji, who was discharging duties at the hospital. Thereafter, the complaint was forwarded to the police station where it was investigated. During the course of investigation, it transpired that, while causing injuries to the complainant and other witnesses, dacoity of gold ornaments was also committed and, therefore, offences punishable under Section 395 and 397 of the Indian Penal Code were added. At the conclusion of the investigation, the accused were chargesheeted in the court of the learned Judicial Magistrate, First Class, Mehsana, for the offences punishable under Sections 323, 324, 325, 147, 148, 149, 395, 397 of the Indian Penal Code.

As the offences punishable under Sections 395 and 397 are exclusively triable by a Court of Sessions, the

case was committed to the Sessions Court for trial where it was numbered as Sessions Case No.108 of 1993, in the court of the learned Assistant Sessions Judge, Mehsana. The learned Assistant Sessions Judge framed necessary charge against the respondents. The charge was read over and explained to the respondents. The respondents did not plead guilty to the charge and claimed to be tried. Therefore, the prosecution led oral as well documentary evidence against the respondents to substantiate the charge. After recording of evidence of prosecution witnesses was over, further statements of the respondents were recorded under Section 313 of the Code of Criminal Procedure, 1973. In their statements, the respondents denied the case of the prosecution, but did not lead any evidence in defence.

On appreciation of the evidence led by the prosecution, the learned Assistant Sessions Judge came to the conclusion that no reliable evidence was led by the prosecution to prove the charge under Section 395 and 397 of the Indian Penal Code. However, having regard to the evidence of the injured complainant and other injured witnesses, the learned Assistant Sessions Judge came to the conclusion that it was proved by the prosecution beyond reasonable doubt that the respondents had committed offences punishable under Sections 323, 324, 325, 147, 148 read with Sections 149 of the Indian Penal Code. In that view of the matter, the learned Assistant Sessions Judge acquitted the accused of the offences punishable under Sections 395 and 397 of the Indian Penal Code, but convicted them under Sections 323, 324, 325, 147, 148 read with Sections 149 of the Indian Penal Code, and sentenced the respondents to suffer rigorous imprisonment for nine months as well a fine of Rs.100/-, in default to undergo simple imprisonment for one month.

Being aggrieved by the abovereferred to judgment and order of the learned Assistant Sessions Judge, Mehsana, all the accused preferred Criminal Appeal No.15 of 1995 in the court of the learned Additional Sessions Judge, Mehsana. The learned Additional Sessions Judge gave benefit of doubt to original accused Nos. 3,4,7,9,10, and 11, but upheld the conviction of original accused Nos. 1,2,5,6 and 8 by judgment and order dated September 21, 1995, giving rise to the present application.

During the course of hearing of the revision application, the complainant as well as other injured witnesses and the accused have presented a compromise purshis and prayed to grant permission to compound

offences of which the petitioners are convicted. Compromise purshis is ordered to be taken on record.

Mr. A.B.Munshi, learned counsel has appeared for the original complainant as well as the injured witnesses, whereas Mr.A.J. Patel, learned senior counsel has appeared for the petitioners and other accused. Learned counsel Mr. A.B. Munshi has identified thumb impressions of Kamalaben Joitaram, who is the original informant, as well as injured witnesses (1) Jivatben (2) Taraben (3) Sakriben Ratilal (4)Purniben and (5) Jethiben, put on the compromise purshis. Learned counsel Mr. A.J. Patel has identified signatures of (1) Jaswatsinh Bhagwansinh Darbar, (2) Mahendrasinh Hathisinh Darbar,(3) Kanusinh Jelsinh Darbar (4) Matarsinh Ishwarsinh Darbar, (5) Kalyansinh Mansinh Darbar, (6) Kalyansinh Madarsinh Darbar, (7) Katisinh Natarinsh Darbar, (8) Vishnusinh Bhagwansinh Darbar, (9) Chelsang Dhoraji Darbar, (10) Chitrajsinh H. Parmar (11) Ranjisinsh Dansinh Darbar, put on the compromise. The complainant as well as injured witnesses are present before the court. We have made necessary enquiries. The complainant as well as injured witnesses have informed the court that they have been explained the contents of the compromise, and after having understood the same, they have put their thumb impression thereon. Similarly, all the accused are also personally present in the court, and have admitted the contents of the compromise. From the contents of the compromise, it is evident that possession of land bearing Survey No.408 situated at village Memadpur, Taluka & District Mehsana, with reference to which incident had taken place, is handed over to original complainant Kamlaben Joitaram. Acquittal of the original accused Nos.3,4,7,9,10 and 11 is not challenged by the State in any appeal. The policy of the Legislature adopted in section 320 is that in case of certain offences where interest of the public is not vitally affected, complainant and/or injured should be permitted to come to terms with a party against whom complaint was made. There is no manner of doubt that at present the relations between the complainant and the injured witnesses on the one hand and the accused on the other are cordial. The parties have entered into the compromise of their own free will. By allowing the parties to compromise, there is no manner of doubt that enduring feud between the parties is likely to come to an end. Having regard to the facts and circumstances of the case, we are of the opinion that permission to compound offences, as prayed for, deserves to be granted in exercise of powers conferred on us by Section 320(6) of the Code of Criminal Procedure, 1973. We may mention

that the provisions of Section 320(7) are not applicable to the facts of the case and, therefore, we do not see any impediment in permitting composition of offences.

For the foregoing reasons, permission to compound offences as prayed for in the compromise purshis is granted. Composition of offences under Section 320 has the effect of acquittal of the accused with whom offences have been compounded. Therefore, the petitioners are ordered to be acquitted. Bail bonds executed by the petitioners stand cancelled. Rule is made absolute to the extent indicated hereinabove.

(swamy)